

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

**SUSAN OTTELE and WILLIAM  
COLLIER, JR., on their own behalf and on  
the behalf of the Estate of Adam J. Collier,  
decedent, ,**

Plaintiff,

**v.**

**OSCAR MARTINEZ and AARON  
HODGES and DOES 1-10, inclusive,,**

Defendants.

1:22-cv-00187-JLT-CDB

**PROTECTIVE ORDER**

The Court recognizes that at least some of the documents, information and materials that may be sought through discovery in the above-captioned action are claimed to be protected under the privacy privilege and the official information privilege, and are normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain information that is confidential, protected by the privacy rights of the parties or third

1 parties, or otherwise be protected by the official information privilege. The purpose of this Order  
2 is to protect the confidentiality of such materials as much as practical during the litigation.

3 Pursuant to Local Rule 141.1(c)(1), the parties have indicated that the types of information  
4 eligible for protection under this order are materials which contain sensitive information related to  
5 the security of CDCR institutions and personnel. Pursuant to Local Rule 141.1(c)(2), the parties  
6 represent that there is a particular need for the protection of this information because of the need  
7 to preserve institutional security for CDCR and the need to safeguard personal information of  
8 CDCR employees. Given the importance of the need for institutional security and the  
9 preservation of individual employees from threats or risk of bodily injury, the parties agree, and  
10 the Court concurs, that this matter should be addressed by court order, as opposed to a private  
11 agreement between the parties, to ensure its enforceability through the power of contempt, if  
12 necessary.

13 THEREFORE:

14 DEFINITIONS

15 1. The term “confidential information” will mean and include information contained or  
16 disclosed in any materials, including documents, portions of documents, answers to  
17 interrogatories, responses to requests for admissions, trial testimony, deposition testimony, and  
18 transcripts of trial testimony and depositions, including data, summaries, and compilations  
19 derived therefrom that is deemed to be confidential information by any party to which it belongs.

20 2. The term “materials” will include, but is not limited to: documents; correspondence;  
21 memoranda; bulletins; blueprints; specifications; minutes; telegrams; letters; drafts; worksheets;  
22 notes of conversations; desk diaries; appointment books; recordings; photographs; motion  
23 pictures; compilations from which information can be obtained and translated into reasonably  
24 usable form through detection devices; sketches; drawings; notes (including laboratory notebooks  
25 and records); reports; instructions; disclosures; other writings; models and prototypes and other  
26 physical objects.

27 3. The term “counsel” will mean counsel of record, and other attorneys, paralegals,  
28 secretaries, and support staff employed in the law offices identified below:

1 Rob Bonta  
2 Attorney General of California  
3 R. Lawrence Bragg  
4 Supervising Deputy Attorney General  
5 James Mathison  
6 Deputy Attorney General  
7 State Bar No. 149387  
8 1300 I Street, Suite 125  
9 P.O. Box 944255  
10 Sacramento, CA 994244-2550  
11 Telephone: (916) 210-6274  
12 Fax: (916) 324-5205  
13 E-mail: James.Mathison@doj.ca.gov  
14

15  
16 California Department of Corrections and Rehabilitation  
17 California Correctional Health Care Services  
18 Office of Legal Affairs  
19

20 Christopher A. Lisieski, State Bar No. 321862  
21 Wagner Jones Helsley PC  
22 265 E. River Park Circle, Suite 310  
23 Fresno, CA 93720  
24 Telephone: (559) 233-4800  
25 Fax: (559) 233-9330  
26 E-mail: clisieski@wjhattorneys.com  
27

## 28 GENERAL RULES

1 4. Each party to this litigation that produces or discloses any materials, answers to  
2 interrogatories, responses to requests for admission, trial testimony, deposition testimony, and  
3 transcripts of trial testimony and depositions, or information that the producing party believes  
4 should be subject to this Protective Order may designate the same as "CONFIDENTIAL" or  
5 "CONFIDENTIAL - FOR COUNSEL ONLY."

6 a. Designation as "CONFIDENTIAL": Any party may designate information as  
7 "CONFIDENTIAL" only if, in the good faith belief of such party and its counsel, the unrestricted  
8 disclosure of such information could potentially place the safety of non-parties at risk, or result in  
9 the disclosure of confidential, personal information concerning non-parties.

10 b. Designation as "CONFIDENTIAL - FOR COUNSEL ONLY": Any party may  
11 designate information as "CONFIDENTIAL - FOR COUNSEL ONLY" only if, in the good faith  
12 belief of such party and its counsel, the information is among that considered to be most sensitive  
13

1 by the party, including but not limited information that potentially places the safety of non-parties  
2 at risk, or results in the disclosure of confidential, personal information concerning non-parties.

3 5. In the event the producing party elects to produce materials for inspection, no  
4 marking need be made by the producing party in advance of the initial inspection. For purposes of  
5 the initial inspection, all materials produced will be considered as “CONFIDENTIAL - FOR  
6 COUNSEL ONLY,” and must be treated as such pursuant to the terms of this Order. Thereafter,  
7 upon selection of specified materials for copying by the inspecting party, the producing party  
8 must, within a reasonable time prior to producing those materials to the inspecting party, mark the  
9 copies of those materials that contain confidential information with the appropriate confidentiality  
10 marking.

11 6. Whenever a deposition taken on behalf of any party involves a disclosure of  
12 confidential information of any party:

13 a. the deposition or portions of the deposition must be designated as containing  
14 confidential information subject to the provisions of this Order; such designation must be made  
15 on the record whenever possible, but a party may designate portions of depositions as containing  
16 confidential information after transcription of the proceedings; [A] party will have until fourteen  
17 (14) days after receipt of the deposition transcript to inform the other party or parties to the action  
18 of the portions of the transcript to be designated “CONFIDENTIAL” or “CONFIDENTIAL -  
19 FOR COUNSEL ONLY.”

20 b. the disclosing party will have the right to exclude from attendance at the deposition,  
21 during such time as the confidential information is to be disclosed, any person other than the  
22 deponent, counsel (including their staff and associates), the court reporter, and the person(s)  
23 agreed upon pursuant to paragraph 8 below; and

24 c. the originals of the deposition transcripts and all copies of the deposition must bear  
25 the legend “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY,” as appropriate,  
26 and the original or any copy ultimately presented to a court for filing must not be filed unless and  
27 until the party marking the transcript as “CONFIDENTIAL” or “CONFIDENTIAL – FOR  
28 COUNSEL ONLY” has had an opportunity to request that any filing be made under seal.

1           7. All confidential information designated as “CONFIDENTIAL” or “CONFIDENTIAL  
2 FOR COUNSEL ONLY” must not be disclosed by the receiving party to anyone other than those  
3 persons designated within this order and must be handled in the manner set forth below and, in  
4 any event, must not be used for any purpose other than in connection with this litigation, unless  
5 and until such designation is removed either by agreement of the parties, or by order of the Court.  
6 This provision does not prevent the submission of materials designated “CONFIDENTIAL” or  
7 “CONFIDENTIAL – FOR COUNSEL ONLY” as exhibits, if the party claiming confidentiality  
8 has had the opportunity to seek sealing, as discussed under Paragraph 11, below.

9           8. Information designated “CONFIDENTIAL - FOR COUNSEL ONLY” must be  
10 viewed only by counsel (as defined in paragraph 3) of the receiving party, and by independent  
11 experts under the conditions set forth in this Paragraph. The right of any independent expert to  
12 receive any confidential information will be subject to the expert signing the attached Agreement  
13 and Acknowledgment to be bound by this Protective Order.

14           9. Information designated “confidential” must be viewed only by counsel (as defined in  
15 paragraph 3) of the receiving party, by independent experts (pursuant to the terms of paragraph  
16 8), by court personnel, and by the additional individuals listed below, provided each such  
17 individual has read this Order in advance of disclosure and has agreed in writing to be bound by  
18 its terms:

- 19           a) Executives who are required to participate in policy decisions with reference to this  
20 action;
- 21           b) Technical personnel of the parties with whom Counsel for the parties find it necessary  
22 to consult, in the discretion of such counsel, in preparation for trial of this action;
- 23           c) Stenographic and clerical employees associated with the individuals identified above;  
24 and
- 25           d) Any individual parties to the litigation.

26           10. With respect to material designated “CONFIDENTIAL” or “CONFIDENTIAL –  
27 FOR COUNSEL ONLY,” any person indicated on the face of the document to be its originator,  
28 author or a recipient of a copy of the document, may be shown the same.

1           11. All information which has been designated as “CONFIDENTIAL” or  
2 “CONFIDENTIAL -- FOR COUNSEL ONLY” by the producing or disclosing party, and any and  
3 all reproductions of that information, must be retained in the custody of the counsel for the  
4 receiving party identified in paragraph 3 and the persons authorized to view those documents  
5 under Paragraphs 8 and 9.

6           12. Before any materials produced in discovery, answers to interrogatories, responses to  
7 requests for admissions, deposition transcripts, or other documents which are designated as  
8 confidential information are filed with the Court for any purpose, the party seeking to file such  
9 material must advise the party which has designated the materials as Confidential which materials  
10 they intend to submit and allow them to seek permission of the Court to have the material be filed  
11 under seal. No document may be filed under seal, i.e., closed to inspection by the public, except  
12 pursuant to a Court order that authorizes the sealing of the particular document, or portions of it.  
13 A sealing order may issue only upon a showing that the information is privileged or protectable  
14 under the law. The request must be narrowly tailored to seek sealing only of the material  
15 permitted by law to be sealed.

16           13. At any stage of these proceedings, any party may object to a designation of the  
17 materials as confidential information. The party objecting to confidentiality must notify, in  
18 writing, counsel for the designating party of the objected-to materials and the grounds for the  
19 objection. If the dispute is not resolved consensually between the parties within seven (7) days of  
20 receipt of such a notice of objections, the objecting or designating party may move the Court for a  
21 ruling on the objection. The materials at issue must be treated as confidential information, as  
22 designated by the designating party, until the Court has ruled on the objection or the matter has  
23 been otherwise resolved.

24           14. All confidential information must be held in confidence by those inspecting or  
25 receiving it, and must be used only for purposes of this action. Counsel for each party, and each  
26 person receiving confidential information must take reasonable precautions to prevent the  
27 unauthorized or inadvertent disclosure of such information. If confidential information is  
28 disclosed to any person other than a person authorized by this Order, the party responsible for the

1 unauthorized disclosure must immediately bring all pertinent facts relating to the unauthorized  
2 disclosure to the attention of the other parties and, without prejudice to any rights and remedies of  
3 the other parties, make every effort to prevent further disclosure by the party and by the person(s)  
4 receiving the unauthorized disclosure.

5 15. No party will be responsible to another party for disclosure of confidential  
6 information under this Order if the information in question is not labeled or otherwise identified  
7 as such in accordance with this Order.

8 16. If a party, through inadvertence, produces any confidential information without  
9 labeling or marking or otherwise designating it as such in accordance with this Order, the  
10 designating party may give written notice to the receiving party that the document or thing  
11 produced is deemed confidential information, and that the document or thing produced should be  
12 treated as such in accordance with that designation under this Order. The receiving party must  
13 treat the materials as confidential, once the designating party so notifies the receiving party. If the  
14 receiving party has disclosed the materials before receiving the designation, the receiving party  
15 must notify the designating party in writing of each such disclosure. Counsel for the parties will  
16 agree on a mutually acceptable manner of labeling or marking the inadvertently produced  
17 materials as “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY - SUBJECT  
18 TO PROTECTIVE ORDER.”

19 17. Nothing within this order will prejudice the right of any party to object to the  
20 production of any discovery material on the grounds that the material is protected as privileged or  
21 as attorney work product.

22 18. Nothing in this Order will bar counsel from rendering advice to their clients with  
23 respect to this litigation and, in the course thereof, relying upon any information designated as  
24 confidential information, provided that the contents of the information must not be disclosed.

25 19. This Order will be without prejudice to the right of any party to oppose production of  
26 any information for lack of relevance or any other ground other than the mere presence of  
27 confidential information. The existence of this Order must not be used by either party as a basis  
28 for discovery that is otherwise improper under the Federal Rules of Civil Procedure.

1           20. Nothing within this order will be construed to prevent disclosure of confidential  
2 information if such disclosure is required by law or by order of the Court.

3           21. Upon final termination of this action, including any and all appeals, unless the  
4 producing party has requested a return of all confidential information, counsel for each party must  
5 destroy all confidential information, including any copies, excerpts, and summaries of that  
6 information, and must purge all such information from all machine-readable media on which it  
7 resides. Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs,  
8 memoranda, motions, and other documents filed with the Court that refer to or incorporate  
9 confidential information, and will continue to be bound by this Order with respect to all such  
10 retained information. Further, attorney-work-product materials that contain confidential  
11 information need not be destroyed, but, if they are not destroyed, the person in possession of the  
12 attorney work product will continue to be bound by this Order with respect to all such retained  
13 information. Absent an ex parte motion made within ten (10) calendar days of the termination of  
14 the case, the parties understand that the Court will destroy any confidential documents in its  
15 possession.

16           22. The restrictions and obligations set forth within this order will not apply to any  
17 information that: (a) the parties agree should not be designated confidential information; (b) the  
18 parties agree, or the Court rules, is already public knowledge; (c) the parties agree, or the Court  
19 rules, has become public knowledge other than as a result of disclosure by the receiving party, its  
20 employees, or its agents in violation of this Order; or (d) has come or will come into the receiving  
21 party's legitimate knowledge independently of the production by the designating party.

22           23. The restrictions and obligations within this order will not be deemed to prohibit  
23 discussions of any confidential information with anyone if that person already has or obtains  
24 legitimate possession of that information.

25           24. Transmission by email or some other currently utilized method of transmission is  
26 acceptable for all notification purposes within this Order.

27           25. This Order may be modified by agreement of the parties, subject to approval by the  
28 Court.



26. The Court may modify the terms and conditions of this Order for good cause, or in the interest of justice, or on its own order at any time in these proceedings. The Protective Order and the parties' stipulation do not change, amend, or circumvent any Court rule or Local Rule.

IT IS SO ORDERED.

Dated: **December 19, 2022**

  
UNITED STATES MAGISTRATE JUDGE

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